

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DAMIEN ANTIONE JONES, §  
Movant, §  
§  
v. § No. 3:19-cv-1150-B (BT)  
§  
UNITED STATES OF AMERICA, §  
Respondent. §

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

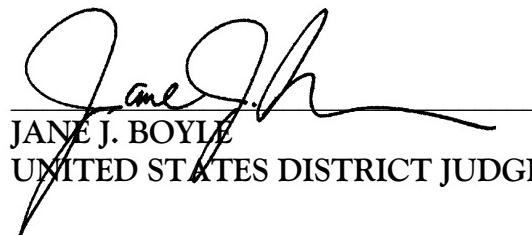
Following a review of this case filed under 28 U.S.C. § 2255 and objections, if any, the Court finds that the Findings and Recommendation of the Magistrate Judge are correct, and they are accepted as the Findings, Conclusions, and Recommendation of the Court. **IT IS, THEREFORE, ORDERED** that the Findings, Conclusions, and Recommendation of the United States Magistrate Judge are accepted.

**Certificate of Appealability**

A certificate of appealability (COA) will be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 330 (2003); *accord Foster v. Quarterman*, 466 F.3d 359, 364 (5th Cir. 2006). The applicant makes a substantial showing if he demonstrates “that jurists of reason could debate the propriety of the district court’s assessment of his constitutional claims or conclude that his claims are ‘adequate to deserve encouragement to proceed further.’” *United States v. Wainwright*, 237 F. App’x 913, 914 (5th Cir. 2007) (per curiam) (quoting *Miller-El*, 537 U.S. at 327); *see Foster*, 466 F.3d at 364.

Considering the Supreme Court's decision in *Davis* and the specific facts of this case, "jurists of reason could debate the propriety" of the recommendations contained herein and conclude "that [the] claims are adequate to deserve encouragement to proceed further." Therefore, Jones is granted a COA on the following issues: (1) whether the appellate-review waiver in his plea agreement bars his *Davis* claim; and (2) whether his appellate-review waiver is unenforceable under the miscarriage-of-justice exception.

**SO ORDERED** this 15<sup>th</sup> day of November, 2021.



JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE